



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

1996

Issued by the Department of Transportation **SERVED MAR 22**

on the 15th day of March, 1996

**Joint Application of**

**UNITED AIR LINES, INC.**

**and**

**LUFTHANSA GERMAN AIRLINES**

**Docket OST-95-369<sup>1</sup>**

**for exemptions pursuant to 49 U.S.C. §40109 and  
for Statements of Authorization under 14 CFR  
Parts 207 and 212 to offer code-share and blocked-  
space services in conjunction with U.S.-Germany  
services**

**ORDER RENEWING EXEMPTIONS AND STATEMENTS OF AUTHORIZATION**

**Summary**

By this order we renew for a period of one year the necessary authorities for United Air Lines, Inc. and Lufthansa German Airlines to conduct operations under a code-share and blocked-space agreement for services (a) between the United States and Germany, (b) within the United States served by United and within Germany served by Lufthansa, and (c) beyond Germany and the United States.

**Background**

Under the Transitional Agreement between the United States and the Federal Republic of Germany, carriers of both countries may enter into cooperative arrangements, such as code-sharing, wet-leasing, and blocked-space arrangements with the airlines designated by either country.

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<sup>1</sup> This case was originally docketed as Docket 49223. However, a new docket number, OST-95-369, was assigned as a result of changes in the docket numbering system. All matters filed in the docket should reference the new docket number.

By Orders 94-1-19 and 94-4-43, the Department granted United and Lufthansa the necessary regulatory authorities to permit the carriers to conduct code-share services within each carrier's domestic market, on transatlantic services linking the carriers' domestic hubs, and beyond each carrier's domestic hubs to third countries, as well as blocked-space/code-sharing service between London's Heathrow Airport and Germany, subject to certain conditions.<sup>2</sup> The authority granted was effective through January 24, 1995.

### **Application**

On November 23, 1994, United and Lufthansa filed a joint application, seeking renewal of their authorities to conduct operations pursuant to their cooperative arrangement. The joint applicants request that their joint application be renewed for a two-year period.<sup>3</sup> A description of the authorities requested and services provided appears in the Appendix to this order.

In support of their application, the joint applicants state that the services to be provided are consistent with the public interest and the U.S.-Germany Transitional Air Services Agreement as well as the Department's International Aviation Policy Statement.<sup>4</sup> They also state that the traveling public benefits from the cooperative arrangement since it provides well coordinated passenger and baggage handling services to passengers.

### **Responsive Pleadings**

American Airlines and Trans World Airlines filed answers, arguing that any renewal of the authority previously granted should be limited to one year. In this regard, American states that the carriers should be put on notice that renewal in the future will be denied outright absent achievement of a liberal agreement with Germany. TWA similarly argues that in order to ensure progress toward a new bilateral agreement, the code-share arrangement should be limited. TWA also states that the joint applicants do not discuss the actual scope of their operations and that the Department may not be aware that Lufthansa has placed the United code on its transatlantic services from every one of its U.S. gateways and also shares the benefit of United's Germany services by placing the codes of both carriers on all flights in the markets. Moreover, TWA maintains that the Department should not allow Lufthansa's indiscriminate application of the "UA" code on its transatlantic flights to divert traffic from a U.S.-flag carrier.

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<sup>2</sup> The Department also dismissed the joint application to the extent that it sought to engage in fifth-freedom code-share services with Lufthansa in the London-Frankfurt market and to conduct code-share operations to Damascus, Syria. (Order 94-4-43 at 7.)

<sup>3</sup> By letter dated August 1, 1995, the joint applicants notified the Department that the code-share services of United and Lufthansa for which renewal is sought continue to be governed by the provisions of the agreements between the two carriers as previously submitted to the Department.

<sup>4</sup> The Parties also invoke the automatic extension provisions of the Administrative Procedure Act (5 U.S.C. section 558(c)), as implemented in Part 377 of the Department's Rules, to keep this authority in effect until final action by the Department on the renewal application.

United and Lufthansa filed a consolidated joint reply, stating that American and TWA have raised no arguments that were not addressed by the Department in the initial approval. Regarding TWA's contention that United and Lufthansa have concealed the scope of their transatlantic services, the joint applicants argue that the original joint application stated the parties' intent for United to code-share on all of Lufthansa's U.S.-Germany services, and that these services were approved by the Department. They also state that the U.S.-Germany Transitional Air Services Agreement guarantees both Lufthansa and United the right to code-share on any transatlantic sector so long as one of them has the requisite Third/Fourth-Freedom frequency allocation. The joint applicants also maintain that a two-year renewal is fully consistent with the code-share provisions of the Transitional Air Services Agreement.

### **Decision**

We have decided to grant the carriers' application and to renew the necessary regulatory authorities to conduct operations under their cooperative arrangement.<sup>5</sup> The authority will be effective for one year from the date of service of this order.

The regulatory provisions applicable to our decision here, 49 U.S.C. § 40109 and §§ 207.10 and 212.6 of the Department's regulations, all require a finding that the authority is in the public interest. In initially approving the authorities for which the joint applicants seek renewal, we found that the services proposed would provide valuable benefits to the traveling and shipping public as they would expand the price and service options available to travelers and shippers, and would provide additional or improved service to Germany to several U.S. cities. We also found that the public would benefit from coordinated passenger and baggage services available under the code-share arrangement. In addition, we found that all of the services proposed were consistent with the 1994 Transitional Air Services Agreement between the United States and Germany. We find that the same public interest reasons that supported the initial award of these authorities supports their renewal.

We find nothing in the comments filed that would lead us to reach a different result. Indeed, no party disputes the public benefits of these services or argues that they are not provided for under the Transitional Agreement. Rather they suggest that the renewed authority should be conditioned.

American and TWA suggest that we condition this renewal upon the conclusion of a liberal aviation agreement with Germany. In addition, TWA suggests that additional conditions should be imposed because, in TWA's view, the alliance diverts too much traffic from U.S. carriers. We note, however, that the rights sought here are fully consistent with the Transitional Agreement between the United States and Germany. Furthermore, having reviewed the record before us, we are unpersuaded that the rights have been used in any way that is inconsistent with what was contemplated by the Transitional Agreement. Against this background, we see no need to condition the authority as has been proposed. We will,

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<sup>5</sup> We also find that Lufthansa and United are operationally and financially qualified to provide the proposed services. (See Orders 86-7-37, 94-1-19 and 94-4-43 for Lufthansa and Order 95-6-26 for United.)

however, limit our award to a period of one year, as is our standard practice with respect to code shares in limited-entry markets.<sup>6</sup>

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<sup>6</sup> *See, e.g.*, Order 95-11-20.

## ACCORDINGLY,

1. We grant Lufthansa German Airlines an exemption from 49 USC § 41301 to the extent necessary to permit it to (a) engage in scheduled foreign air transportation of persons, property and mail between points in Germany and points in the United States (*i.e.*, Third- and Fourth-Freedom services), pursuant to a code-sharing arrangement with United Air Lines, Inc., on flights between Lufthansa's authorized U.S. gateways and points in the United States; and (b) to integrate its service to Washington, D.C. with its other authorized U.S. gateways so that all of its authorized U.S. gateways may be served on a coterminal basis;
2. We grant United Air Lines, Inc., a statement of authorization under 14 CFR Part 207 to engage in code-sharing operations with Lufthansa authorized in ordering paragraph 1 above;
3. We grant United Air Lines, Inc. and Lufthansa German Airlines statements of authorization under Parts 207 and 212, respectively, to engage in code-sharing operations between any U.S. gateway Lufthansa is authorized to serve and any point in Germany (nonstop or over intermediate points on a blind-sector basis only);
4. We grant Lufthansa a statement of authorization under 14 CFR Part 212 to permit it to engage in code-share operations with United on flights that Lufthansa operates:
  - (a) between Frankfurt, on the one hand, and Berlin, Cologne, Düsseldorf, Hamburg, Hanover, Munich, Nürnberg, Stuttgart, Bremen, Dresden, and Leipzig, Federal Republic of Germany, on the other;
  - (b) between Frankfurt, on the one hand, and the following third-country points on a blind-sector basis: Vienna, Austria; Prague, Czech Republic; Copenhagen, Denmark; Cairo, Egypt; Helsinki, Finland; Lyon and Nice, France; Athens, Greece; Budapest, Hungary; Bombay and Delhi, India; Nairobi, Kenya; Kuwait City, Kuwait; Warsaw, Poland; Moscow, Russia; Jeddah and Riyadh, Saudi Arabia; Stockholm, Sweden; Geneva, Switzerland; and Istanbul, Turkey; and
  - (c) between London, England, on the one hand, and Berlin, Hamburg, and Munich, Federal Republic of Germany, on the other hand;
5. We grant United Air Lines, Inc., an exemption from 49 U.S.C. § 41101 to the extent necessary to permit it to engage in scheduled foreign air transportation of persons, property, and mail between (a) points in the United States and Lyon, France, and (b) points in the United States and Nairobi, Kenya, via Frankfurt, Germany, under its code-sharing arrangement with Lufthansa;
6. We grant United Air Lines, Inc. a statement of authorization under Part 207 to permit it to engage in code-sharing operations on a blind-sector basis with Lufthansa on flights operated by United between Lufthansa's U.S. gateways, on the one hand, and Guatemala City, Guatemala; San Salvador, El Salvador; San Jose, Costa Rica; and Panama City, Panama;

7. We grant Lufthansa German Airlines an exemption from § 41301 to the extent necessary to engage in scheduled foreign air transportation of persons, property, and mail beyond its authorized Washington, D.C. gateway, on the one hand, and Guatemala City, Guatemala; San Salvador, El Salvador; San Jose, Costa Rica; and Panama City, Panama, on the other hand, under its code-sharing arrangement with United Air Lines;

8. The authority granted in ordering paragraphs 1 through 7 above is subject to the frequency limitations specified in the Transitional Arrangements for Air Transport Services Agreement between the United States and the Federal Republic of Germany signed May 24, 1994, and, further, to the condition that, upon request, the parties will provide to the Director, Office of International Aviation, a full description of the services operated under the authorities granted to ensure compliance with the Agreement;

9. The authority granted in ordering paragraphs 1 through 7 above is effective immediately and shall remain in effect for a period of one year from the date of service of this order;

10. The code-sharing operations authorized by this order are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in the computer reservation systems and elsewhere, that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (*i.e.*, the ticket), and that the operator shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area of whose airspace the Federal Aviation Administration has issued a flight prohibition;

11. We require United and Lufthansa to comply with the rules for airline designator code-sharing set forth in 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted;

12. In the conduct of the services authorized, we require United and Lufthansa to comply with the provisions of their certificates of public convenience and necessity and foreign air carrier permit, respectively; the Department's regulations governing scheduled and charter air services; and the provisions of all applicable aviation agreements governing the services provided;

13. Except to the extent granted, we deny all requests in Docket OST-95-369;

14. We may amend, modify, or revoke this authority at any time without hearing;

15. We will not entertain petitions for reconsideration of this order;<sup>7</sup> and

16. We will serve a copy of this order on United Air Lines, Inc.; Lufthansa German Airlines; American Airlines, Inc.; Trans World Airlines, Inc.; the Ambassador of the Federal Republic of

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<sup>7</sup> As all parties have had ample opportunity to comment on the United/Lufthansa renewal application, we will not entertain petitions for reconsideration.

Germany in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this notice is available on the World Wide Web at  
<http://www.dot.gov/dotinfo/general/orders/aviation.html>*

Authorities Sought by Joint Applicants

1. An exemption for Lufthansa to permit it to (a) engage in foreign air transportation between points in Germany and points in the United States (Third/Fourth-Freedom services) pursuant to a code-sharing arrangement with United on flights between Lufthansa's authorized U.S. gateways and points in the United States and (b) integrate its service to Washington, D.C. with its other authorized U.S. gateways so that all of its authorized U.S. gateways may be served on a coterminal basis.
2. A Statement of Authorization for United under 14 CFR Part 207 to permit United to put Lufthansa's code on United's Third/Fourth Freedom flights in the U.S.-Germany markets.
3. A Statement of Authorization for United and Lufthansa under Part 207 and 212, respectively, to put each other's codes on their respective flights between any U.S. gateway Lufthansa is authorized to serve and any point in Germany (nonstop or over intermediate points on a blind-sector basis only).
4. A Statement of Authorization for Lufthansa under Part 212 to permit it to put United's code on flights operated by Lufthansa (a) between Frankfurt, on the one hand, and Berlin, Cologne, Düsseldorf, Hamburg, Hanover, Munich, Nürnberg, Stuttgart, Bremen, Dresden, and Leipzig, Federal Republic of Germany, on the other; (b) between Frankfurt, on the one hand, and the following third-country points on a blind-sector basis (*i.e.* without local traffic rights): Vienna, Austria; Prague, Czech Republic; Copenhagen, Denmark; Cairo, Egypt; Helsinki, Finland; Lyon and Nice, France; Athens, Greece; Budapest, Hungary; Bombay and Delhi, India; Nairobi, Kenya; Kuwait City, Kuwait; Warsaw, Poland; Moscow, Russia; Jeddah and Riyadh, Saudi Arabia; Stockholm, Sweden; Geneva, Switzerland; and Istanbul, Turkey;<sup>1</sup> (c) between London, England, on the one hand, and Berlin, Hamburg and Munich, Federal Republic of Germany, on the other hand.<sup>2</sup>
5. An exemption pursuant to 49 U.S.C. § 40109 for United from 49 U.S.C. § 41101 to the extent necessary to permit United to engage in scheduled foreign air transportation of persons, property and mail between (a) points in the United States and Lyon, France, and (b) points in the United States and Nairobi, Kenya, under its code-sharing arrangement with Lufthansa.
6. A Statement of Authorization under Part 207 to permit United to put Lufthansa's code on United's flights on a blind-sector basis between Lufthansa's U.S. gateways, on the one hand, and Guatemala City, Guatemala; San Salvador, El Salvador; San Jose, Costa Rica; and Panama City, Panama, on the other; and

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<sup>1</sup>The joint applicants note that the authority for Lufthansa to code-share to Nice was issued May 23, 1994, by an amendment to the original Statement of Authorization

<sup>2</sup> United's operations between London and Berlin, Hamburg and Munich are provided under a blocked-space arrangement. In addition to carrying U.S.-Germany traffic flowing over London, United also carries local fifth freedom traffic in the London-Germany market.



7. An exemption pursuant to 49 U.S.C. § 40109 for Lufthansa from 49 U.S.C. § 41301 to the extent necessary to engage in scheduled foreign air transportation of persons, property, and mail beyond its authorized Washington, D.C. gateway, on the one hand, and Guatemala City, Guatemala, on the other, under its code-sharing arrangement with United.<sup>3</sup>

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<sup>3</sup> Although United states that it would terminate its service to Panama City in January 1995, the parties request continuation of their code-share authority so that code-share services can be resumed if United reintroduces services. We further note that in the original award Lufthansa received an exemption to permit it to engage in scheduled foreign air transportation of persons, property, and mail beyond its authorized Detroit, Michigan gateway, on the one hand, and Guatemala City, Guatemala; San Salvador, El Salvador; San Jose, Costa Rica; and Panama City, Panama, on the other hand, under the code share arrangement. The joint application does not seek renewal of this authority.